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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,670	11/26/2001	Thomas M. Wynnyk	38982.27	4157

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EXAMINER

LIN, WEN TAI

ART UNIT PAPER NUMBER

2154

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,670

Applicant(s)

WYNNYK, THOMAS M.

Examiner

Wen-Tai Lin

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2001.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) 5-9 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4 and 10-12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 26 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-12 are presented for examination.
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - i. Claims 1-4 and 10-12, Group I, drawn to method and apparatus for network monitoring, classified in Class 709, subclass 224.
 - ii. Claims 5-9, Group II, drawn to business method for selling information collected from network devices, classified in Class 705, subclass 1.
3. Inventions Group I and II are related as subcombinations disclosed as useable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately useable. In the instant case, invention Group II has separate utility such as billing customers according to the amount of data collected from network devices. See MPEP 806.05(d).
4. During a telephone conversation with Mr. Timothy O'Sullivan on April 28, ²⁰⁰⁵ an election *was* made to prosecute the invention of group I. Affirmation of this election must be made by applicant in responding to this office action. Claims 5-9 are withdrawn from further consideration by the examiner as being drawn to a nonelected invention. See 37 CFR 1.142(b).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-3 and 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Farrell et al.[U.S. 6751663].

7. As to claim 1, Farrell teaches the invention as claimed including: a computer-implemented method of collecting and processing statistical information relating to data transmissions between computers connected to a computer network [Abstract], said method comprising the steps of:

(a) collecting traffic flow statistics at one or more network devices [18, Fig. 1; col. 1, lines 16-30; col. 32, lines 24-31];

(b) processing the traffic flow statistics, using a first program, to generate a first-stage record for each data transmission, said first-stage record including [Abstract: lines 2-5; i.e., the first program is the collector layer]:

- (i) source IP address and destination IP address [Fig. 11E; col. 13, line 66 ;V col. 14, line 10; col. 24, lines 28-36];
- (ii) amount of data transmitted [see, e.g., SRC_PKTS and DST_PKTS in Table 1]; and
- (iii) transmission start time and end time [see, e.g., START_TIME and SESSION_TIME in Table 1; col. 19, lines 51-59];
- (c) transmitting the first-stage records to a second-stage data processing means having data storage means, and storing said first-stage records therein [e.g., 62, Fig. 6; col. 7, lines 25-48];
- (d) sorting the first-stage records, using a second program, to generate second-stage records corresponding to each unique combination of source IP address and destination IP address for a selected sampling period [e.g., col. 10, lines 26-42; col. 13, lines 32-45];
- (e) transmitting the second-stage records to a third-stage data processing means having data storage means, and storing said second-stage data flow records therein [e.g., col. 18, lines 40-65]; and
- (f) processing the second-stage records, using a third program, to generate third-stage records for each data transmission, said third-stage records including, in addition to the information contained in the second-stage records [e.g., Abstract: lines 5-9; 17, Fig. 1; col. 18, line 20 ;V col. 19, line 11; i.e., the aggregation layer implements the second and third programs; activities]:
 - (i) a network identifier corresponding to the source IP address; and (ii) a network identifier corresponding to the destination IP address [col. 12, lines 55-64].

8. As to claim 2, Farrell teaches that claim 1 comprising the further step of processing the third-stage records, using a fourth program to generate fourth-stage records which identify a service category for each data transmission, said further step including comparing the source network identifier and destination network identifier in each third-stage record against information stored in a database which identifies the relationship between the source network and the destination network [col.12, lines 47-54; col.31, line 47 ;V col.32, line 14].

9. As to claim 3, Farrell further teaches that the one or more network devices includes a router [col.32, lines 3-6].

10. As to claim 10, since the features of this claim can also be found in claims 1, it is rejected for the same reasons set forth in the rejection of claims 1 above.

11. As to claim 12, Farrell further teaches that the first data processing means is associated with the one or more network devices [e.g., Fig.5].

12. As to claim 11, since the features of this claim can also be found in claims 1, 3 and 10, it is rejected for the same reasons set forth in the rejection of claims 1, 3 and 10 above.

Claim Rejections - 35 USC § 103

Art Unit: 2154

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al.(hereafter "Farrell") [U.S. 6751663], as applied to claims 1-3 and 10-12 above.

15. As to claim 4, Farrell does not specifically teach that the sampling period is approximately 300 seconds.

However, Farrell teaches using a sampling period (see SESSION_TIME of Table 1) to control the duration of collection the records in seconds.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that such the sampling period can be set at around 300 seconds because this is an obvious design choice.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Porter [U.S. 6697814];

Piponius et al. [U.S. 20020138601];

Klinker et al. [U.S. 20030088671];

Lau et al. [U.S. 20030033430];

Corlett et al. [U.S. 20030023710];
Shorey et al. [U.S. 20020174216];
Gil et al. [U.S. 20020035628];
Duffield et al. [U.S. 6873600]; and
Sharon et al. [U.S. 6137782].

17. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 days from the mail date of this letter. Failure to respond within the period for response will result in ABANDONMENT of the application (see 35 U.S.C. 133, M.P.E.P. 710.02, 710.02(b)).

Conclusion

Examiner note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the contest of the passage as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wen-Tai Lin whose telephone number is (571)272-3969. The examiner can normally be reached on Monday-Friday (8:00-5:00) .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571)272-3964. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

(703)872-9306 for official communications; and

(571)273-3969 for status inquires draft communication.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wen-Tai Lin

May 2, 2005

Wen-Tai Lin
5/2/05